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Australian Government

Department of Infrastructure, Transport,
Regional Development and Communications

[REDACTED]

Dear [REDACTED]

Notice of Suspected Breaches of the Australian Public Service (APS) Code of Conduct

The department has become aware of alleged conduct by you that may give rise to a breach (or breaches) of the APS Code of Conduct (Code) contained in section 13 of the *Public Service Act 1999* (PS Act).

The purpose of this letter is to advise you that an investigation under the procedures established by the Secretary under section 15(3) of the PS Act is being undertaken.

I have authorised Dr Vivienne Thom, of CPM Reviews Pty Ltd, to investigate the allegations. [REDACTED] is the Breach Decision Maker for this matter.

The allegations

Allegations 1 to 3 relate to alleged conduct which occurred in connection with the acquisition by the Australian Government of a 12.26 hectare parcel of land for \$29,839,026 (GST exclusive) in Bringelly NSW referred to as the 'Leppington Triangle'.

Allegation 1: Procurement of the valuer

It is alleged that you were involved in procuring M J Davis Valuations Pty Ltd (MJD) to conduct the valuation of the Leppington Triangle and you failed to ensure a sufficiently robust approach was taken to the engagement of MJD.

It is alleged that you:

- a) Selected, or caused to be selected, a supplier to conduct the valuation of the Leppington Triangle who was suggested by the Leppington Pastoral Company Pty Ltd, being MJD;
- b) Failed to conduct, or cause to be conducted, an openly competitive procurement approach when selecting MJD as the supplier to conduct the valuation of the Leppington Triangle;
- c) Failed to maintain, or cause to be maintained, records of any capability assessment conducted regarding MJD's suitability as the supplier to conduct the valuation of the Leppington Triangle.

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O F F I C I A L : S e n s i t i v e P e r s o n a l

If proven, each instance of alleged conduct could give rise to breaches of one or more of the following sections of the Code:

- (1) *An APS employee must behave honestly and with integrity in connection with APS employment.*
- (2) *An APS employee must act with care and diligence in connection with APS employment.*
- (4) *An APS employee, when acting in connection with APS employment, must comply with all applicable Australian laws. For this purpose, Australian law means:*
 - (a) *any Act (including this Act), or any instrument made under an Act; or*
 - (b) *any law of a State or Territory, including any instrument made under such a law.*
- (8) *An APS employee must use Commonwealth resources in a proper manner and for a proper purpose.*
- (11) *An APS employee must at all times behave in a way that upholds:*
 - (a) *the APS Values and APS Employment Principles; and*
 - (b) *the integrity and good reputation of the employee's Agency and the APS.*

In respect of section 13(4) of the PS Act, this conduct may amount to a failure to comply with the obligations in and under the *Public Governance, Performance and Accountability Act 2013* (Cth).

In respect of section 13(11)(a) of the PS Act, this conduct may amount to a failure to uphold the 'Ethical' APS Value set out at section 10 of the PS Act:

Ethical

- (2) *The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.*

Allegation 2: Instructions to the valuer

It is alleged that the instructions you gave, or caused to be given, to M J Davis Valuations Pty Ltd (MJD) to conduct the valuation of the Leppington Triangle were inappropriate with respect to the valuation approach to be used and the basis on which the current market value of the land was to be assessed.

It is alleged that you:

- a) Initially caused MJD to conduct the valuation of the Leppington Triangle as a 'desktop valuation'. In a desktop valuation, the valuer does not inspect the property and produces an indicative assessment of its value;
- b) Subsequently caused the valuation being conducted by MJD to be conducted as a 'restricted assessment'. In a restricted assessment, the valuer is instructed by the client not to carry out the usual enquiries and investigations associated with a market valuation;
- c) Initially caused MJD to assess the market value of the Leppington Triangle 'having regard to the highest and best use, including industrial purposes, that may be undertaken on the Leppington Triangle';
- d) Subsequently caused MJD to assess the market value of the Leppington Triangle 'on an Englobo rate per square meter basis based on existing planning parameters with the highest and best use reflected in speculative industrial re-zoning potential within the Western Sydney Priority Growth Area (WSPGA) and Western Sydney Employment Area (WSEA)'.

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 - (a) *any Act (including this Act), or any instrument made under an Act; or*
 - (b) *any law of a State or Territory, including any instrument made under such a law.*
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- (11) *An APS employee must at all times behave in a way that upholds:*
 - (a) *the APS Values and APS Employment Principles; and*
 - (b) *the integrity and good reputation of the employee's Agency and the APS.*

In respect of section 13(4) of the PS Act, this conduct may amount to a failure to comply with the obligations in and under the *Public Governance, Performance and Accountability Act 2013* (Cth).

In respect of section 13(11)(a) of the PS Act, this conduct may amount to a failure to uphold the 'Ethical' APS Value set out at section 10 of the PS Act:

Ethical

- (2) *The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.*

Allegation 3: Advice to decision-makers

It is alleged that, in preparing, contributing to, or approving formal briefings regarding the acquisition of the Leppington Triangle which were provided to the head of the Western Sydney Unit of the department, to other senior officials in the department, and/or to portfolio Ministers, you:

- a) omitted or failed to include relevant information;
- b) otherwise failed to adequately and diligently provide advice to the recipients of those briefings.

It is alleged that you:

- c) Failed to obtain, document, or cause to be documented, any approval for the mechanism for acquisition of the Leppington Triangle being changed from compulsory acquisition under the *Land Acquisition Act 1989* (Cth) to acquisition by agreement under the *Land Acquisition Act 1989* (Cth);
- d) Omitted from, or failed to ensure the inclusion in, briefings that the mechanism for acquisition of the Leppington Triangle had been changed from compulsory acquisition under the *Land Acquisition Act 1989* (Cth) to acquisition by agreement under the *Land Acquisition Act 1989* (Cth);
- e) Omitted from, or failed to ensure the inclusion in, the 6 March 2018 briefing adequate advice on the basis upon which the valuation undertaken by MJD of the Leppington Triangle was conducted;
- f) Omitted from, or failed to ensure the inclusion in, briefings references to other valuations of the Leppington Triangle which were in the possession of the

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department, including the valuation obtained by NSW Roads and Maritimes Services;

- g) Omitted from, or failed to ensure the inclusion in, the briefing of 4 July 2018 any reference to the price to be paid for the Leppington Triangle;
- h) Omitted from, or failed to ensure the inclusion in, the briefing of 17 July 2018 any reference to the price to be paid for the Leppington Triangle;
- i) Omitted from, or failed to ensure the inclusion in, the briefing of 25 July 2018 any reference to the price to be paid for the Leppington Triangle;
- j) Omitted from, or failed to ensure the inclusion in, the briefing of 31 July 2018 that, of the \$30 million dollars to be paid for the Leppington Triangle, an estimated \$29.84 million was to be paid by the Australian Government for its 12.26 ha portion, with an estimated \$0.16 million to be paid by the NSW Government for its 1.36 ha portion;
- k) Omitted from, or failed to ensure the inclusion in, the briefings of 4 July 2018, 17 July 2018, 25 July 2018 and 31 July 2018 that fact that the Australian Government was intending to pay significantly more per hectare than the NSW Government the NSW Government's portion of the Leppington Triangle;
- l) Omitted from, or failed to ensure the inclusion in, the briefings other than the 6 March 2018 briefing discussion of value for money in the terms of the acquisition of the Leppington Triangle.

If proven, each instance of alleged conduct could give rise to breaches of one or more the following sections of the Code:

- (1) *An APS employee must behave honestly and with integrity in connection with APS employment.*
- (2) *An APS employee must act with care and diligence in connection with APS employment.*
- (4) *An APS employee, when acting in connection with APS employment, must comply with all applicable Australian laws. For this purpose, Australian law means:*
 - (a) *any Act (including this Act), or any instrument made under an Act; or*
 - (b) *any law of a State or Territory, including any instrument made under such a law.*
- (8) *An APS employee must use Commonwealth resources in a proper manner and for a proper purpose.*
- (11) *An APS employee must at all times behave in a way that upholds:*
 - (a) *the APS Values and APS Employment Principles; and*
 - (b) *the integrity and good reputation of the employee's Agency and the APS.*

In respect of section 13(4) of the PS Act, this conduct may amount to a failure to comply with the obligations in the *Public Governance, Performance and Accountability Act 2013* (Cth).

In respect of section 13(11)(a) of the PS Act, this conduct might amount to a failure to uphold the 'Ethical' and 'Impartial' APS Values set out at section 10 of the PS Act:

Ethical

- (2) *The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.*

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Impartial

- (5) *The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.*

Allegation 4: Maintaining probity when engaging with individual landholder

Allegation 4 relates to your interactions with landowners in Western Sydney on Australian Government activities in which they may have an interest.

It is alleged that in your meetings and/or communications with an interested landholder, [REDACTED], you failed to ensure that probity was maintained.

It is alleged that you:

- a) Met with [REDACTED] on 17 October 2016 at a coffee shop without another employee of the department present;
- b) Failed to prepare a record of this meeting with [REDACTED]

If proven, each instance of alleged conduct could give rise to breaches of one or more of the following sections of the Code:

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- (2) *An APS employee must act with care and diligence in connection with APS employment*
- (4) *An APS employee, when acting in connection with APS employment, must comply with all applicable Australian laws. For this purpose, Australian law means:*
 - (a) *any Act (including this Act), or any instrument made under an Act; or*
 - (b) *any law of a State or Territory, including any instrument made under such a law.*
- (7) *An APS employee must:*
 - (a) *take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the employee's APS employment*
- (11) *An APS employee must at all times behave in a way that upholds:*
 - (a) *the APS Values and APS Employment Principles; and*
 - (b) *the integrity and good reputation of the employee's Agency and the APS.*

In respect of section 13(4) of the PS Act, this conduct may amount to a failure to comply with the obligations in and under the *Public Governance, Performance and Accountability Act 2013* (Cth).

In respect of section 13(11)(a) of the PS Act, this conduct may amount to a failure to uphold the 'Ethical' APS Value set out at section 10 of the PS Act:

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Formal direction

You are directed not discuss the matters in this letter with other employees, including APS employees from other departments, other than members of the Conduct and Performance Team of Human Resources and Property Branch and your support person.

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The investigation process

Copies of the department's section 15(3) procedures mentioned above, and a copy of the department's Suspected Misconduct Guidelines are attached for your information.

I have also attached for your information a copy of Part 3 of the PS Act, which deals with the Code and related matters.

Dr Thom will prepare a report with findings of fact. Dr Thom will provide her report to the Breach Decision-Maker. Dr Thom will be in touch with you shortly regarding the investigation and to give you a reasonable opportunity to make a statement in relation to the suspected breach. This statement may be made in person and/or in writing. If you have questions concerning this matter, please contact Dr Thom at [REDACTED] or by telephone on [REDACTED].

Possible sanctions

If a finding of breach of the Code is made, a sanction delegate will be appointed. The possible sanctions which may be imposed for breach of the Code are:

- termination of employment;
- reduction in classification;
- re-assignment of duties;
- reduction in salary;
- deductions from salary, by way of fine (up to a maximum of 2% of salary); or
- a reprimand.

An Agency Head or Delegate may also determine that no sanction be imposed or that a less formal response such as counselling or training is appropriate in the circumstances.

Support Person

You are entitled to have a support person of your choice, such as a colleague, friend, family member, union or legal representative during the Code process if you wish. However, please note that a support person cannot be a person who either is or may be a potential witness, or is otherwise involved, in any of the matters connected with these suspected breaches of the Code as outlined above.

Personal Information

In the course of the investigation, personal information about you may be collected by the investigator from you, other employees or other people, or from within documentary records held by the department or other sources.

Any personal information about other people given to you during this investigation will be for the purpose of ensuring that you properly understand the matters under investigation and have a fair opportunity to provide your perspective. You are not to use or disclose any information about the investigation, including personal information about any person, without the prior express approval from me.

If you are found to have breached the Code, information about any breach or sanction imposed may be used in the course of making future decisions about your employment with the department. Other use or disclosure may be authorised under reg 9.2 of the *Public Service Regulations 1999*.

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Employee Assistance Program

I appreciate that the contents of this letter may be difficult for you. As such, you may consider it useful to talk to a professional counsellor. If you would like to talk to a professional counsellor, I would encourage you to contact the department's Employee Assistance Program on 1300 360 364.

Yours sincerely

Stephanie Bourke
Assistant Secretary Human Resources and Property
6 October 2020

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